

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE INITIAL PUBLIC OFFERING  
SECURITIES LITIGATION

Master File No. 21 MC 92 (SAS)

THIS DOCUMENT RELATES TO:

01 Civ. 2359; 01 Civ. 3225; 01 Civ. 3360; 01 Civ.  
3910; 01 Civ. 5143; 01 Civ. 5644; 01 Civ. 5838;  
01 Civ. 6000; 01 Civ. 6008; 01 Civ. 6120; 01 Civ.  
6271; 01 Civ. 6277; 01 Civ. 6322; 01 Civ. 6747;  
01 Civ. 6846; 01 Civ. 6870; 01 Civ. 7002; 01 Civ.  
7046; 01 Civ. 7247; 01 Civ. 7344; 01 Civ. 9618;  
01 Civ. 9651; 01 Civ. 9797; 01 Civ. 9799; 01 Civ.  
9800; 01 Civ. 10040; 01 Civ. 10051; 01 Civ.  
10075; 01 Civ. 10092; 01 Civ. 10108; 01 Civ.  
10140; 01 Civ. 10161, 01 Civ. 10738; 01 Civ.  
10753; 01 Civ. 10838; 01 Civ. 10867; 01 Civ.  
10884; 01 Civ. 11230, 01 Civ. 11234

**STIPULATION AND NOTICE OF DISMISSAL**

WHEREAS, counsel for the plaintiffs and certain individual defendants listed on Schedule 1 (collectively, the “Tolling Parties”) in the above-captioned actions have executed Reservation of Rights and Tolling Agreements (“Tolling Agreements”) substantially similar to the form annexed hereto as Exhibit A;

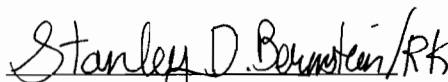
WHEREAS, each of the Tolling Agreements provide for dismissal without prejudice and without costs pursuant to Fed. R. Civ. P. 41(a)(1) of all claims against certain individual defendants;

WHEREAS, counsel for each of the Tolling Parties have executed the annexed Stipulation and Orders of Dismissal (“Stipulations”), dismissing the above-captioned actions without prejudice and without costs as to certain individual defendants listed on Schedule 1;

IT IS HEREBY STIPULATED AND AGREED that the above-captioned actions are dismissed without prejudice as to the individual defendants listed on Schedule 1, and dismissed pursuant to the Opinion and Order dated February 19, 2003, as to the individual defendants listed on Schedule 2. The dismissal of the above-captioned action is without costs to the individual defendants listed on Schedules 1 and 2.

Dated: January 12, 2009  
New York, New York

**BERNSTEIN LIEBHARD LLP**

  
Stanley D. Bernstein  
([bernstein@bernlieb.com](mailto:bernstein@bernlieb.com))  
Rebecca M. Katz ([katz@bernlieb.com](mailto:katz@bernlieb.com))  
Christian Siebott ([siebott@bernlieb.com](mailto:siebott@bernlieb.com))  
10 East 40<sup>th</sup> Street  
New York, NY 10016  
Tel.: (212) 779-1414

**BARROWAY TOPAZ KESSLER  
MELTZER & CHECK, LLP**

David Kessler ([dkessler@btkmc.com](mailto:dkessler@btkmc.com))  
280 King of Prussia Road  
Radnor, Pennsylvania 19087  
Tel.: (610) 667-7706

**SIROTA & SIROTA LLP**

Howard B. Sirota ([howard@sirotalaw.com](mailto:howard@sirotalaw.com))  
260 Madison Avenue  
New York, New York 10016  
Tel.: (212) 425-9055

**MILBERG LLP**

Robert A. Wallner ([rwallner@milberg.com](mailto:rwallner@milberg.com))  
Ariana J. Tadler ([atadler@milberg.com](mailto:atadler@milberg.com))  
Peter G.A. Safirstein ([psafirstein@milberg.com](mailto:psafirstein@milberg.com))  
One Pennsylvania Plaza  
New York, New York 10119-0165  
Tel.: (212) 594-5300

**STULL STULL & BRODY**


Jules Brody ([jbrody@ssbny.com](mailto:jbrody@ssbny.com))  
Menashe Shapiro ([mshapiro@ssbny.com](mailto:mshapiro@ssbny.com))  
6 East 45<sup>th</sup> Street  
New York, New York 10017  
Tel.: (212) 687-7230

**WOLF HALDENSTEIN ADLER FREEMAN  
& HERZ LLP**

Fred Taylor Isquith ([isquith@whafh.com](mailto:isquith@whafh.com))  
Thomas H. Burt ([burt@whafh.com](mailto:burt@whafh.com))  
270 Madison Avenue  
New York, New York 10016  
Tel.: (212) 545-4600

**Plaintiffs' Executive Committee**

**CADWALADER, WICKERSHAM &  
TAFT**

  
Gregory A. Markel ([greg.markel@cwt.com](mailto:greg.markel@cwt.com))  
Ronit Setton ([ronit.setton@cwt.com](mailto:ronit.setton@cwt.com))  
Kate Hooker ([kate.hooker@cwt.com](mailto:kate.hooker@cwt.com))  
One World Financial Center  
New York, New York 10281  
Tel.: (212) 504-6000

*Attorneys for Anthony T. Maher and Lip-Bu Tan (Accelerated Networks individual defendants); Eric D. Stonestrom (Airspan Networks, Inc. individual defendant); Mark R. Ross (Autoweb.com individual defendant); Felix Lin (Avantgo, Inc. individual defendant); Howard Schultz (Drugstore.com, Inc. individual defendant); Andrew S. Rachleff (Equinix, Inc. individual defendant); Michael Scott Leslie (Flashnet Comm., Inc. individual defendant); John Oltman and Mark Tebbe (Lante Corp. individual defendants); Glenn A. Etherington and James P. Janicki (Metasolv Software, Inc. individual defendants); Lennert J. Leader, Philip Callaghan, and Philip Scheps (Multex individual defendants); Richard C. St. Peter (PurchasePro.com, Inc. individual defendant); Edward A. Cespedes and Stephan J. Paternot (theGlobe.com, Inc. individual defendants); C. Ian S.M. Smith, Michael R. Rodrigues, and Nicholas E. Sinacori (Tickets.com, Inc. individual defendants); Raja H. Venkatesh (Viador, Inc. individual defendant)*

**COOLEY GODWARD KRONISH LLP**

---

William S. Freeman ([freemanws@cooley.com](mailto:freemanws@cooley.com))  
William Grauer ([grauerwe@cooley.com](mailto:grauerwe@cooley.com))  
Angela L. Dunning ([adunning@cooley.com](mailto:adunning@cooley.com))  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Tel.: (650) 843-5000


*Attorneys for Chris Branscum, Kenneth Kenitzer, and Timothy Marcotte (Repeater Technologies, Inc. individual defendants)*

**CADWALADER, WICKERSHAM &  
TAFT**

Gregory A. Markel (*greg.markel@cwt.com*)  
Ronit Setton (*ronit.setton@cwt.com*)  
Kate Hooker (*kate.hooker@cwt.com*)  
One World Financial Center  
New York, New York 10281  
Tel.: (212) 504-6000

*Attorneys for* Anthony T. Maher and Lip-Bu Tan (Accelerated Networks individual defendants); Eric D. Stonestrom (Airspan Networks, Inc. individual defendant); Mark R. Ross (Autoweb.com individual defendant); Felix Lin (Avantgo, Inc. individual defendant); Howard Schultz (Drugstore.com, Inc. individual defendant); Andrew S. Rachleff (Equinix, Inc. individual defendant); Michael Scott Leslie (Flashnet Comm., Inc. individual defendant); John Oltman and Mark Tebbe (Lante Corp. individual defendants); Glenn A. Etherington and James P. Janicki (Metasolv Software, Inc. individual defendants); Lennert J. Leader, Philip Callaghan, and Philip Scheps (Multex individual defendants); Richard C. St. Peter (PurchasePro.com, Inc. individual defendant); Edward A. Cespedes and Stephan J. Paternot (theGlobe.com, Inc. individual defendants); C. Ian S.M. Smith, Michael R. Rodrigues, and Nicholas E. Sinacori (Tickets.com, Inc. individual defendants); Raja H. Venkatesh (Viador, Inc. individual defendant)

**COOLEY GODWARD KRONISH LLP**

  
William S. Freeman (*freemanws@cooley.com*)  
William Grauer (*grauerwe@cooley.com*)  
Angela L. Dunning (*adunning@cooley.com*)  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Tel.: (650) 843-5000

*Attorneys for* Chris Branscum, Kenneth Kenitzer, and Timothy Marcotte (Repeater Technologies, Inc. individual defendants)

**COX, CASTLE & NICHOLSON LLP**

  
Jonathan S. Kitchen (*jkitchen@coxcastle.com*)  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

Andrew J. Ceresney (*ajceresney@debevoise.com*)  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

Shirli Fabbri Weiss  
(*shirli.weiss@dlapiper.com*)  
David A. Priebe  
(*david.priebe@dlapiper.com*)  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

Ronald D. Lefton (*leftonr@gtlaw.com*)  
Toby S. Soli (*solit@gtlaw.com*)  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

Jane W. Parver (*jparver@kayescholer.com*)  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

Joseph De Simone  
(*jdesimone@mayerbrown.com*)  
Leslie Chebli  
(*lchebli@mayerbrown.com*)  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

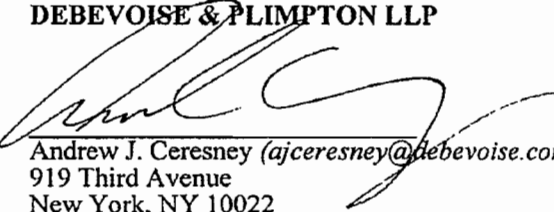
*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*

**COX, CASTLE & NICHOLSON LLP**

Jonathan S. Kitchen ([jkitchen@coxcastle.com](mailto:jkitchen@coxcastle.com))  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

  
Andrew J. Ceresney ([ajceresney@debevoise.com](mailto:ajceresney@debevoise.com))  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

Shirli Fabbri Weiss  
([shirli.weiss@dlapiper.com](mailto:shirli.weiss@dlapiper.com))  
David A. Priebe  
([david.priebe@dlapiper.com](mailto:david.priebe@dlapiper.com))  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

Ronald D. Lefton ([leftonr@gtlaw.com](mailto:leftonr@gtlaw.com))  
Toby S. Soli ([solit@gtlaw.com](mailto:solit@gtlaw.com))  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

Jane W. Parver ([jparver@kayescholer.com](mailto:jparver@kayescholer.com))  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

Joseph De Simone  
([jdesimone@mayerbrown.com](mailto:jdesimone@mayerbrown.com))  
Leslie Chebli  
([lchebli@mayerbrown.com](mailto:lchebli@mayerbrown.com))  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*



**COX, CASTLE & NICHOLSON LLP**

Jonathan S. Kitchen ([jkitchen@coxcastle.com](mailto:jkitchen@coxcastle.com))  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

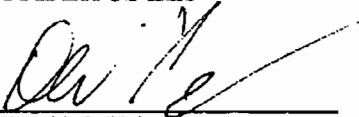
*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

Andrew J. Ceresney ([ajceresney@debevoise.com](mailto:ajceresney@debevoise.com))  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

  
Shirli Fabbri Weiss  
([shirli.weiss@dlapiper.com](mailto:shirli.weiss@dlapiper.com))  
David A. Priebe  
([david.priebe@dlapiper.com](mailto:david.priebe@dlapiper.com))  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

Ronald D. Lefton ([leftonr@gtlaw.com](mailto:leftonr@gtlaw.com))  
Toby S. Soli ([solit@gtlaw.com](mailto:solit@gtlaw.com))  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

Jane W. Parver ([jparver@kayescholer.com](mailto:jparver@kayescholer.com))  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

Joseph De Simone  
([jdesimone@mayerbrown.com](mailto:jdesimone@mayerbrown.com))  
Leslie Chebli  
([lchebli@mayerbrown.com](mailto:lchebli@mayerbrown.com))  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*

**COX, CASTLE & NICHOLSON LLP**

Jonathan S. Kitchen (*jkitchen@coxcastle.com*)  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

Andrew J. Ceresney (*ajceresney@debevoise.com*)  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

Shirli Fabbri Weiss  
(*shirli.weiss@dlapiper.com*)  
David A. Priebe  
(*david.priebe@dlapiper.com*)  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

  
Ronald D. Leflon (*leflonr@gtlaw.com*)  
Toby S. Soli (*solit@gtlaw.com*)  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

Jane W. Parver (*jparver@kayescholer.com*)  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

Joseph De Simone  
(*jdesimone@mayerbrown.com*)  
Leslie Chebli  
(*lchebli@mayerbrown.com*)  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*



**COX, CASTLE & NICHOLSON LLP**

Jonathan S. Kitchen ([jkitchen@coxcastle.com](mailto:jkitchen@coxcastle.com))  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

Andrew J. Ceresney ([ajceresney@debevoise.com](mailto:ajceresney@debevoise.com))  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

Shirli Fabbri Weiss  
([shirli.weiss@dlapiper.com](mailto:shirli.weiss@dlapiper.com))  
David A. Priebe  
([david.priebe@dlapiper.com](mailto:david.priebe@dlapiper.com))  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

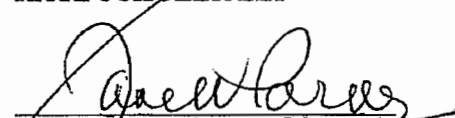
*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

Ronald D. Lefton ([leftonr@gtlaw.com](mailto:leftonr@gtlaw.com))  
Toby S. Soli ([solit@gtlaw.com](mailto:solit@gtlaw.com))  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

  
Jane W. Parver ([jparver@kayescholer.com](mailto:jparver@kayescholer.com))  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

Joseph De Simone  
([jdesimone@mayerbrown.com](mailto:jdesimone@mayerbrown.com))  
Leslie Chebli  
([lchebli@mayerbrown.com](mailto:lchebli@mayerbrown.com))  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*

**COX, CASTLE & NICHOLSON LLP**

Jonathan S. Kitchen (*jkitchen@coxcastle.com*)  
555 California Street, 10th Floor  
San Francisco, CA 94104-1513  
Tel.: (415) 262-5168

*Attorneys for Richard Heaps (Clarent Corp.  
individual defendant)*

**DEBEVOISE & PLIMPTON LLP**

Andrew J. Ceresney (*ajceresney@debevoise.com*)  
919 Third Avenue  
New York, NY 10022  
Tel.: (212) 909-6000

*Attorneys for Jack C. Chen and Fernando J.  
Espuelas (Starmedia individual defendants)*

**DLA PIPER US LLP**

Shirli Fabbri Weiss  
(*shirli.weiss@dlapiper.com*)  
David A. Priebe  
(*david.priebe@dlapiper.com*)  
2000 University Avenue  
East Palo Alto, CA 94303  
Tel.: (650) 833-2000

*Attorneys for Mark Culhane (iManage, Inc.  
individual defendant)*

**GREENBERG TRAURIG LLP**

Ronald D. Lefton (*leftonr@gtlaw.com*)  
Toby S. Soli (*solit@gtlaw.com*)  
200 Park Avenue  
New York, NY 10166  
Tel.: (212) 801-9200

*Attorneys for Alan J. Hirschfield, Allan R.  
Tessler, and Mark F. Imperiale  
(Marketwatch.com, Inc. individual defendants);  
Addison Fischer and Michael S. Battaglia  
(SmartDisk Corporation individual defendant)*

**KAYE SCHOLER LLP**

Jane W. Parver (*jparver@kayescholer.com*)  
425 Park Avenue  
New York, NY 10022  
Tel.: (212) 836-8000

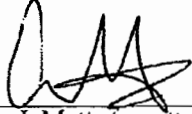
*Attorneys for Raul Alarcon, Jr., Pablo Raul  
Alarcon, Sr., and Joseph A. Garcia (Spanish  
Broadcasting System, Inc. individual  
defendants)*

**MAYER BROWN LLP**

  
Joseph De Simone  
(*desimone@mayerbrown.com*)  
Leslie Chebli  
(*lchebli@mayerbrown.com*)  
1675 Broadway  
New York, NY 10019-5820  
Tel.: (212) 506-2500

*Attorneys for Michael W. Ferro, Jr. and Rebecca  
S. Maskey (Click Commerce, Inc. individual  
defendants)*

**MCDERMOTT WILL & EMERY LLP**



Amanda J. Metts ([ametts@mwe.com](mailto:ametts@mwe.com))  
Mark W. Pearlstein ([mpearlstein@mwe.com](mailto:mpearlstein@mwe.com))  
28 State Street  
Boston, MA 02109  
Tel.: (617) 535-4000

*Attorneys for* Steven Benson and Paul K. Zurlo  
(MCK Communications, Inc. individual  
defendants)

**MORRISON & FOERSTER LLP**

Jack C. Auspitz ([jauspitz@mofo.com](mailto:jauspitz@mofo.com))  
Joel C. Haims ([jhaims@mofo.com](mailto:jhaims@mofo.com))  
Angela T. Rella ([arella@mofo.com](mailto:arella@mofo.com))  
1290 Avenue of the Americas  
New York, New York 10104  
Tel.: (212) 468-8000

*Attorneys for* Daniel Roche (Integrated  
Information Systems, Inc. individual  
defendant); Gary D. Kennedy (Tenfold  
Corporation individual defendant)

**MORGAN, LEWIS & BOCKIUS LLP**

Carolyn W. Jaffe ([cjaffe@morganlewis.com](mailto:cjaffe@morganlewis.com))  
101 Park Avenue  
New York, New York 10178  
Tel.: (212) 309-6000

*Attorneys for* Douglas O. Reudink (Metawave  
Communications Corp. individual defendant)

**QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP**

Rex Lee ([rexlee@quinnemanuel.com](mailto:rexlee@quinnemanuel.com))  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Tel.: (212) 849-7000

*Attorneys for* Lee Hamilton (AirNet  
Communications Corporation individual  
defendant)

**MCDERMOTT WILL & EMERY LLP**

Amanda J. Metts ([ametts@mwe.com](mailto:ametts@mwe.com))  
Mark W. Pearlstein ([mpearlstein@mwe.com](mailto:mpearlstein@mwe.com))  
28 State Street  
Boston, MA 02109  
Tel.: (617) 535-4000

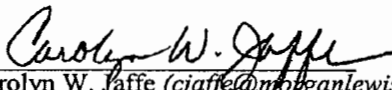
*Attorneys for Steven Benson and Paul K. Zurlo  
(MCK Communications, Inc. individual  
defendants)*

**MORRISON & FOERSTER LLP**

Jack C. Auspitz ([jauspitz@mofo.com](mailto:jauspitz@mofo.com))  
Joel C. Haims ([jhaims@mofo.com](mailto:jhaims@mofo.com))  
Angela T. Rella ([arella@mofo.com](mailto:arella@mofo.com))  
1290 Avenue of the Americas  
New York, New York 10104  
Tel.: (212) 468-8000

*Attorneys for Daniel Roche (Integrated  
Information Systems, Inc. individual  
defendant); Gary D. Kennedy (Tenfold  
Corporation individual defendant)*

**MORGAN, LEWIS & BOCKIUS LLP**

  
Carolyn W. Jaffe ([cjaffe@morganlewis.com](mailto:cjaffe@morganlewis.com))  
101 Park Avenue  
New York, New York 10178  
Tel.: (212) 309-6000

*Attorneys for Douglas O. Reudink (Metawave  
Communications Corp. individual defendant)*

**QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP**

Rex Lee ([rexlee@quinnemanuel.com](mailto:rexlee@quinnemanuel.com))  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Tel.: (212) 849-7000

*Attorneys for Lee Hamilton (AirNet  
Communications Corporation individual  
defendant)*

**MCDERMOTT WILL & EMERY LLP**

Amanda J. Metts ([ametts@mwe.com](mailto:ametts@mwe.com))  
Mark W. Pearlstein ([mpearlstein@mwe.com](mailto:mpearlstein@mwe.com))  
28 State Street  
Boston, MA 02109  
Tel.: (617) 535-4000


*Attorneys for Steven Benson and Paul K. Zurlo  
(MCK Communications, Inc. individual  
defendants)*

**MORGAN, LEWIS & BOCKIUS LLP**

Carolyn W. Jaffe ([cjaffe@morganlewis.com](mailto:cjaffe@morganlewis.com))  
101 Park Avenue  
New York, New York 10178  
Tel.: (212) 309-6000

*Attorneys for Douglas O. Reudink (Metawave  
Communications Corp. individual defendant)*

**MORRISON & FOERSTER LLP**



Jack C. Auspitz ([jauspitz@mofo.com](mailto:jauspitz@mofo.com))  
Joel C. Haims ([jhaims@mofo.com](mailto:jhaims@mofo.com))  
Angela T. Rella ([arella@mofo.com](mailto:arella@mofo.com))  
1290 Avenue of the Americas  
New York, New York 10104  
Tel.: (212) 468-8000

*Attorneys for Daniel Roche (Integrated  
Information Systems, Inc. individual  
defendant); Gary D. Kennedy (Tenfold  
Corporation individual defendant)*

**QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP**

Rex Lee ([rexlee@quinnemanuel.com](mailto:rexlee@quinnemanuel.com))  
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Tel.: (212) 849-7000

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Mark W. Pearlstein ([mpearlstein@mwe.com](mailto:mpearlstein@mwe.com))  
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Boston, MA 02109  
Tel.: (617) 535-4000

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Jack C. Auspitz ([jauspitz@mofo.com](mailto:jauspitz@mofo.com))  
Joel C. Haims ([jhaims@mofo.com](mailto:jhaims@mofo.com))  
Angela T. Rella ([arella@mofo.com](mailto:arella@mofo.com))  
1290 Avenue of the Americas  
New York, New York 10104  
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New York, New York 10178  
Tel.: (212) 309-6000

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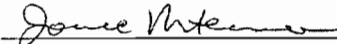
**QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP**

  
Rex Lee ([rexlee@quinnemanuel.com](mailto:rexlee@quinnemanuel.com))  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Tel.: (212) 849-7000

*Attorneys for Lee Hamilton (AirNet  
Communications Corporation individual  
defendant)*



**WILMER CUTLER PICKERING HALE  
AND DORR LLP**



Joanne Monteavaro  
(joanne.monteavaro@wilmerhale.com)  
399 Park Avenue  
New York, NY 10022  
Tel.: (212) 230-8800

*Attorneys for C. Wayne Cape and F. Barron  
Hughes (Optio Software, Inc. individual  
defendants)*

**STEVEN J. HELLER**

Steven J. Heller (sjheller@yahoo.com)  
130 Tanjong Rhu Rd. #06-05  
Pebble Bay  
Singapore 436918  
Tel.: +65-8223-1727


(Starmedia Network, Inc. individual defendant)

**WILMER CUTLER PICKERING HALE & STEVEN J. HELLER  
DORR LLP**

---

Joanne Montecavaro  
([joanne.montecavaro@wilmerhale.com](mailto:joanne.montecavaro@wilmerhale.com))  
399 Park Avenue  
New York, NY 10022  
Tel.: (212) 230-8800

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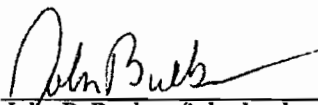


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Steven J. Heller ([sjheller@yahoo.com](mailto:sjheller@yahoo.com))  
130 Tanjong Rhu Rd. #06-05  
Pebble Bay  
Singapore 436918  
Tel.: +65-8223-1727

(Starmedia Network, Inc. individual defendant)

**ROPES & GRAY LLP**



John P. Bueker ([john.bueker@ropesgray.com](mailto:john.bueker@ropesgray.com))  
Randall W. Bodner  
([randall.bodner@ropesgray.com](mailto:randall.bodner@ropesgray.com))  
One International Place  
Boston, MA 02110-2624  
Tel.: (617) 951-7951

*Attorneys for Paul Walker and Richard Smith  
(SMTC Corporation individual defendants)*

**SHEARMAN & STERLING LLP**

Justin S. Chang ([jchang@shearman.com](mailto:jchang@shearman.com))  
Jeffrey S. Facter ([jfacter@shearman.com](mailto:jfacter@shearman.com))  
525 Market Street, 15th Floor  
San Francisco, CA 94105  
Tel.: (415) 616-1100

*Attorneys for Edward Kinsey (Ariba, Inc.  
individual defendant) (specially appearing for  
purposes of this stipulation)*

**WILMER CUTLER PICKERING HALE &  
DORR LLP**

Joanne Monteavaro  
([joanne.monteavaro@wilmerhale.com](mailto:joanne.monteavaro@wilmerhale.com))  
399 Park Avenue  
New York, NY 10022  
Tel.: (212) 230-8800

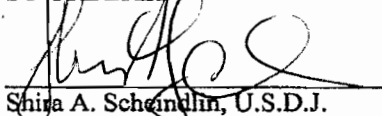
*Attorneys for George H. Conrades, Robert  
Ball, III, Terrance McGuire, Timothy Weller,  
and Todd Dagres (Akamai Technologies, Inc.  
individual defendants)*

**WILSON SONSINI GOODRICH & ROSATI**

Nina F. Locker ([nlocker@wsgr.com](mailto:nlocker@wsgr.com))  
Cynthia A. Dy ([cdy@wsgr.com](mailto:cdy@wsgr.com))  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Tel.: (650) 493-9300

*Attorneys for Brian M. Nesmith and Michael J.  
Johnson (Cacheflow, Inc. individual defendants);  
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Forte, and Timothy A. Rogers (Integrated  
Telecom Express, Inc. individual defendants);  
Ronald Croen (Nuance Communications, Inc.  
individual defendant); and Fred L. Brown  
(Xcare.net, Inc. individual defendant)*

SO ORDERED:



Shira A. Scheindlin, U.S.D.J.


1/22/09

**ROPES & GRAY LLP**

John P. Bueker ([john.bueker@ropesgray.com](mailto:john.bueker@ropesgray.com))  
Randall W. Bodner  
([randall.bodner@ropesgray.com](mailto:randall.bodner@ropesgray.com))  
One International Place  
Boston, MA 02110-2624  
Tel.: (617) 951-7951

*Attorneys for Paul Walker and Richard Smith  
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Justin S. Chang ([jchang@shearman.com](mailto:jchang@shearman.com))  
Jeffrey S. Factor ([jfactor@shearman.com](mailto:jfactor@shearman.com))  
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Tel.: (415) 616-1100

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Joanne Monteavaro  
([joanne.monteavaro@wilmerhale.com](mailto:joanne.monteavaro@wilmerhale.com))  
399 Park Avenue  
New York, NY 10022  
Tel.: (212) 230-8800

*Attorneys for George H. Conrades, Robert  
Ball, III, Terrance McGuire, Timothy Weller,  
and Todd Dages (Akamai Technologies, Inc.  
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**WILSON SONSINI GOODRICH & ROSATI**

Nina F. Locker ([nlocker@wsgr.com](mailto:nlocker@wsgr.com))  
Cynthia A. Dy ([cdy@wsgr.com](mailto:cdy@wsgr.com))  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Tel.: (650) 493-9300

*Attorneys for Brian M. Nesmith and Michael J.  
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John P. Bueker (*john.bueker@ropesgray.com*)  
Randall W. Bodner  
(*randall.bodner@ropesgray.com*)  
One International Place  
Boston, MA 02110-2624  
Tel.: (617) 951-7951

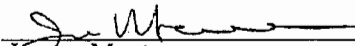
*Attorneys for Paul Walker and Richard Smith  
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Justin S. Chang (*jchang@shearman.com*)  
Jeffrey S. Facter (*jfacter@shearman.com*)  
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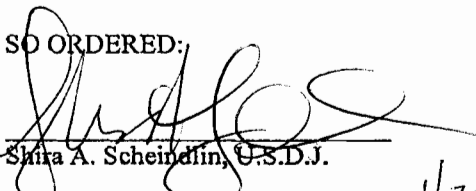
*Attorneys for George H. Conrades, Robert  
Ball, III, Terrance McGuire, Timothy Weller,  
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Nina F. Locker (*nlocker@wsgr.com*)  
Cynthia A. Dy (*cdy@wsgr.com*)  
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Palo Alto, CA 94304-1050  
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**ROPES & GRAY LLP**

John P. Bueker ([john.bueker@ropesgray.com](mailto:john.bueker@ropesgray.com))  
Randall W. Bodner  
([randall.bodner@ropesgray.com](mailto:randall.bodner@ropesgray.com))  
One International Place  
Boston, MA 02110-2624  
Tel.: (617) 951-7951

*Attorneys for Paul Walker and Richard Smith  
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**SHEARMAN & STERLING LLP**

Justin S. Chang ([jchang@shearman.com](mailto:jchang@shearman.com))  
Jeffrey S. Facter ([jfacter@shearman.com](mailto:jfacter@shearman.com))  
525 Market Street, 15th Floor  
San Francisco, CA 94105  
Tel.: (415) 616-1100

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**WILMER CUTLER PICKERING HALE &  
DORR LLP**

Joanne Monteavaro  
([joanne.monteavaro@wilmerhale.com](mailto:joanne.monteavaro@wilmerhale.com))  
399 Park Avenue  
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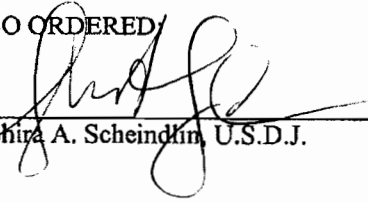
*Attorneys for George H. Conrades, Robert  
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Nina F. Locker ([nlocker@wsgr.com](mailto:nlocker@wsgr.com))  
Cynthia A. Dy ([cdy@wsgr.com](mailto:cdy@wsgr.com))  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
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*Attorneys for Brian M. Nesmith and Michael J.  
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SO ORDERED

  
Shira A. Scheindlin, U.S.D.J.

1/22/09



# EXHIBIT A

**SECOND ADDENDUM TO RESERVATION OF RIGHTS AND TOLLING  
AGREEMENT**

The undersigned counsel for the plaintiffs, on the one hand, and the undersigned individual defendants, or counsel to the individual defendants, on the other hand (each individually a “Party” and collectively the “Parties”), hereby agree as follows:

Whereas, the Parties executed a Reservation of Rights and Tolling Agreement (“Tolling Agreement”), dated as of July 20, 2002, as amended by the Addendum to Reservation of Rights and Tolling Agreement (“First Addendum to the Tolling Agreement”); and

Whereas, the Tolling Agreement and the First Addendum to the Tolling Agreement will expire on or about September 26, 2007; and

Whereas, the Parties desire to preserve the status quo as of the effective date of this agreement and further extend the termination date of the Tolling Agreement and the First Addendum to the Tolling Agreement:

IT IS HEREBY AGREED that:

Paragraph 1 of the Tolling Agreement is amended to read:

“1. The effective date of this Reservation of Rights and Tolling Agreement (“Tolling Agreement”) is August 2, 2007 (the “Effective Date”).”

Paragraph 4 of the Tolling Agreement is amended to read:

“4. The statute of limitations, or any similar limitations period, and any other defense in law or equity relating to the passage of time as in effect on the Effective Date of this Tolling Agreement are tolled with respect to claims that constitute interrelated wrongful acts (as such term or a similar term is defined in the relevant insurance policy of the Party’s primary carrier) with regard to the facts and issues alleged in the case captioned *In re: Initial Public Offering Securities Litigation, 21 MC 92 (SAS)* (the “IPO Actions”), that any Party may have or bring

against another Party, including members of the putative class set forth in the amended complaint in the IPO action in which such Parties are named, from the Effective Date of this Tolling Agreement through and including the earlier of:

- (a) 30 days after the date of termination of this Tolling Agreement; or
- (b) August 27, 2010.

Because the Parties have agreed that the Effective Date of this Tolling Agreement is August 2, 2007, the applicable statute of limitations for the claims currently asserted in the IPO Actions shall be the statute of limitations for such claims as they are in effect as of the Effective Date of this Tolling Agreement, and not any subsequently amended statute of limitations period.”

Paragraph 7 of the Tolling Agreement is amended to read:

“7. Nothing in this Tolling Agreement shall have the effect of reviving any claims that are otherwise barred by any statute of limitations or similar rule of law or equity prior to the Effective Date.”

Paragraph 13 of the Tolling Agreement is amended to read:

“13. This Tolling Agreement may be terminated by any Party. The termination shall be effective upon the later of delivery of a written notice of termination from any Party addressed to Counsel for the other Party or the posting of such notice on LexisNexis File and Serve. Pursuant to Paragraph 4 above, the statute of limitations, or similar limitation periods, and any other defense relating to the passage of time shall be tolled until 30 days after the effective date of termination. Notice of termination provided hereunder shall be posted on LexisNexis File and Serve and sent by facsimile or overnight delivery to the following persons at the addresses set out below:

If to the Individual Defendants:

Morrison & Foerster LLP  
Attn: Jack C. Auspitz, Esq.  
1290 Avenue of the Americas  
New York, NY 10104  
Tel: (212) 468-8000  
Fax: (212) 468-7900

If to the Plaintiffs:

Milberg Weiss LLP  
Attn: Melvyn I. Weiss, Esq.  
One Pennsylvania Plaza  
New York, NY 10119-0165  
Tel: (212) 594-5300  
Fax: (212) 868-1229

and

Bernstein Liebhard & Lifshitz, LLP  
Attn: Stanley D. Bernstein, Esq.  
10 East 40<sup>th</sup> Street, 22<sup>nd</sup> Floor  
New York, NY 10016  
Tel: (212) 779-1414  
Fax: (212) 779-3218"

Paragraph 15 of the Tolling Agreement is amended to read:

"15. This Tolling Agreement shall not be deemed to be an acceptance of service or waiver of any rights, claims or defenses which any Party may have, and which the Parties expressly reserve, with respect to past or future efforts to serve, except as follows:

(a) The Parties agree that where multiple complaints were filed with respect to a particular Party, proper service of one such complaint upon that Party shall be deemed proper service of all such complaints against that Party; and

(b) If any plaintiff seeks to recommence litigation pursuant to this Tolling Agreement against a dismissed Party, that plaintiff need not re-serve the summons or complaint upon that Party, but may rest upon any prior efforts to serve that Party, subject to whatever rights,

claims, or defenses that Party may have with regard to the prior service, but plaintiff shall post on LexisNexis File and Serve a notice of recommencement of the IPO Action or any of the tolled claims against such dismissed Party.”

The signatories to this Second Addendum to Reservation of Rights and Tolling Agreement (“Second Addendum to the Tolling Agreement”) represent and warrant that they have the authority to bind the Parties on whose behalf they are executing this Second Addendum to the Tolling Agreement.

Dated: \_\_\_\_\_, 2007

By: \_\_\_\_\_  
Individual Defendant or Counsel for  
the Individual Defendant

Dated: \_\_\_\_\_, 2007

By: \_\_\_\_\_  
Plaintiffs Executive Committee  
Member  
On behalf of plaintiff on behalf of  
himself and all others similarly  
situated

**SCHEDULE 1 OF INDIVIDUAL DEFENDANTS**

<b>ISSUER</b>	<b>DOCKET NO.</b>	<b>INDIVIDUAL DEFENDANT</b>
Accelerated Networks, Inc.	01 Civ. 5644	Anthony T. Maher
		Lip-Bu Tan
AirNet Communications Corp.	01 Civ. 10161	Lee Hamilton
Airspan Networks, Inc.	01 Civ. 6747	Eric D. Stonestrom
Akamai Technologies, Inc.	01 Civ. 6000	George H. Conrades
		Robert Ball, III
		Terrance McGuire
		Timothy Weller
		Todd Dagues
Ariba, Inc.	01 Civ. 2359	Edward Kinsey
Autoweb.com	01 Civ. 3360	Mark R. Ross
Avantgo Inc.	01 Civ. 9618	Felix Lin
Cacheflow, Inc.	01 Civ. 5143	Brian M. NeSmith
		Michael J. Johnson
Clarent Corp.	01 Civ. 6322	Richard Heaps
Drugstore.com, Inc.	01 Civ. 5838	Howard Schultz
Equinix, Inc.	01 Civ. 7002	Andrew S. Rachleff
Evolve Software, Inc.	01 Civ. 9800	Douglas S. Sinclair
		John P. Bantleman
		Kenneth J. Bozzini
FlashNet Comm., Inc.	01 Civ. 10738	Michael Scott Leslie
iManage, Inc.	01 Civ. 6277	Mark Culhane
Integrated Information Systems, Inc.	01 Civ. 6120	Daniel Roche
Integrated Telecom Express, Inc.	01 Civ. 10108	Daniel Chen
		Richard H. Forte
		Timothy A. Rogers
Lante Corporation	01 Civ. 7046	John Oltman
		Mark Tebbe
Marketwatch.com, Inc.	01 Civ. 3225	Alan J. Hirschfield
		Allan R. Tessler
		Mark F. Imperiale



**SCHEDULE 1 OF INDIVIDUAL DEFENDANTS**

<b>ISSUER</b>	<b>DOCKET NO.</b>	<b>INDIVIDUAL DEFENDANT</b>
MCK Communications, Inc.	01 Civ. 11230	Steven Benson
		Paul K. Zurlo
Metawave Communications Corp.	01 Civ. 9799	Douglas O. Reudink
Multex	01 Civ. 3910	Lennert J. Leader
		Philip Callaghan
		Philip Scheps
Nuance Communications, Inc.	01 Civ. 7344	Ronald Croen
Optio Software, Inc.	01 Civ 10051	C. Wayne Cape
		F. Barron Hughes
PurchasePro.com, Inc.	01 Civ. 10867	Richard C. St. Peter
Repeater Technologies, Inc.	01 Civ. 10140	Chris Branscum
		Kenneth Kenitzer
		Timothy Marcotte
SmartDisk Corporation	01 Civ. 6870	Addison Fischer
		Michael S. Battaglia
Spanish Broadcasting System, Inc.	01 Civ. 10753	Raul Alarcon, Jr.
		Pablo Raul Alarcon, Sr.
		Joseph A. Garcia
Starmedia	01 Civ. 6846	Fernando J. Espuelas
		Jack C. Chen
		Steven J. Heller
SMTC Corp.	01 Civ. 10838	Paul Walker
		Richard Smith
Tenfold Corporation	01 Civ. 9797	Gary D. Kennedy
The Globe.com, Inc.	01 Civ. 7247	Edgard A. Cespedes
		Stephan J. Paternot
Tickets.com, Inc.	01 Civ. 6008	C. Ian S.M.-Smith
		Michael R. Rodrigues
		Nicholas E. Sinacori
Viador, Inc.	01 Civ. 10040	Raja H. Venkatesh
Xcare.net, Inc.	01 Civ. 10075	Fred L. Brown

**SCHEDULE 2 OF INDIVIDUAL DEFENDANTS**

<b>ISSUER</b>	<b>DOCKET NO.</b>	<b>INDIVIDUAL DEFENDANT</b>
Click Commerce, Inc.	01 Civ. 11234	Michael W. Ferro, Jr.
		Rebecca S. Maskey
Metasolv Software, Inc.	01 Civ. 9651	Glenn A. Etherington
		James P. Janicki